

RESOLUTION B-18-086
AMENDING THE ANNUAL BUDGET
FOR MANATEE COUNTY, FLORIDA
FOR FISCAL YEAR 2017-2018

WHEREAS, Florida Statutes 129.06, authorizes the Board of County Commissioners to amend its budget for the current fiscal year as follows:

- a) Appropriations for expenditures in any fund may be decreased and other appropriations in the same fund correspondingly increased, provided the total appropriations of the fund are not changed.
- b) Appropriations from reserves may be made to increase the appropriation for any particular expense in the same fund, or to create an appropriation in the fund for any lawful purpose.
- c) Unanticipated revenues, including increased receipts for enterprise or proprietary funds, may be appropriated for their intended purpose, and may be transferred between funds to properly account for the unanticipated revenue.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Manatee County, Florida that the 2017-2018 budget is hereby amended in accordance with FS 129.06 as described on the attached summary and specified in the budget adjustment batch files which are listed below:

Department: PUBLIC WORKS
Fund: UNINCORPORATED SERVICES
Fund: STORM WATER MANAGEMENT
Description: Transfers \$250,000 from reserves in the MSTU-Unincorporated Services to the Storm Water Management fund to restore function of the storm water conveyance system that runs below the parking lot at Cortez Plaza prior to the peak of the storm season.

Batch ID: DM61118A

Reference: BU18000325

ADOPTED IN OPEN SESSION WITH A QUORUM PRESENT AND VOTING THIS 12th DAY OF June, 2018.



BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: Priscilla
Chairman

ATTEST: Angelina Colonnese
Clerk of Circuit Court

By: Vibi Jansen
Deputy Clerk

APPROVED in Open Session

Manatee County Board of County
Commissioners

Manatee County Government Administrative Center
Commission Chambers, First Floor
9:00 a.m. - June 12, 2018

June 12, 2018 - Regular Meeting
Agenda Item #77

Subject

Authorization for Staff to Make Repairs - Bradenton Associates, Code Enforcement Case #CE2016120294

Briefings

Briefing Provided Upon Request

Contact and/or Presenter Information

Jeff Bowman, Division Chief, Ext. 6854

06/12/2018

Action Requested

Motion to authorize staff to make reasonable repairs, which are required to bring the property into compliance, charge the violator with the cost of the repairs, and potentially place a lien on the property, as the violations present a serious threat to public health, safety, and welfare, relative to property situated at 705 Cortez Road West.

Enabling/Regulating Authority

Section 162.09 (1) Florida Statutes

Section 2-7-26 (b) Code of Ordinances

Background Discussion

The subject property is located at 705 Cortez Road West, Bradenton (Pin#5342710059) and is known as Cortez Plaza East (location map attached). The property owner, Bradenton Associates, was cited for not making the necessary repairs to collapsing infrastructure (underground storm water pipes), thereby, creating a public health, safety, and welfare issue on and around the property. There are large holes on the property that continue to get larger with each rain event. Vehicles and pedestrians travel the affected area. The property owner made some repairs last year, but now refuses to continue the repairs. Additionally, this infrastructure is a part of the main stormwater system for that area. It runs from one end of the property to the other, connecting to the County maintained system at both ends. This compromises the stormwater system in that area, which could potentially cause a life safety issue and damage (flooding) to other properties in the area in a significant rain event.

Daily fines are running and total approximately \$7,000 to date and are capped at \$10,000 per the Magistrate's Order. Staff has issued two (2) Notices to Appear (NTA) to Bradenton Associates and the Circuit Court ruled in favor of the County, ordering them to pay a \$500 fine in both cases, which were paid. Staff also submitted, in March of this year, a Request for Legal Services (RLS) (Matter No. 2018-0172) with the County Attorney's Office.

Code Enforcement Staff has exhausted all means of compelling voluntary compliance with the property owner on this public safety issue.

Violation: Section 2-9-105(L) of the County Code or Ordinances.

History:

1. Notice of Violation was issued January 26, 2017.
2. The Special Magistrate Hearing was held February 28, 2018. The property owner was ordered to repair the stormwater drains and the parking lot to a safe and functional condition on or before March 1, 2018, or a fine of \$75.00 per day to a maximum amount of \$10,000.00 would be imposed.
3. Special Magistrate Hearing was held May 23, 2018. Staff brought this forward after proper notice was provided. Staff requested the previous Compliance Order be amended to include notifying the County Commission, pursuant to Florida Statutes 162.09(1), to make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of repairs along with any fines imposed. The Magistrate ordered the Compliance Order to be amended as such.
4. Property is still not in compliance.

Staff is requesting approval to make reasonable repairs to this property as it is within the Commission's authority as outlined in the Statutes and the Code of Ordinances

Public Works staff has been monitoring the site and drainage conditions of this tributary to Wares Creek. It drains an area going south from this site to 53rd Ave W. Areas that could have concern if the drainage repairs are not made before storm season include Burgundy Condos, Heather Hills MHP, Casa Loma MHP, parts of Golf Lakes MHP and Floridana MHP. With the authority granted by the Magistrate's order and the Board, staff intends to enter the property to make emergency repairs to the drainage system. The work may be undertaken by a contracted provider.

The immediate focus will be to remedy the two locations that currently have holes showing in the parking lot and likely a degradation to the drainage system. These repairs will be focused only on restoring function to the storm water flow through the property. That means the County does not intend on performing work for these repairs to return the parking lot to its previous conditions/configuration. The County's repairs will most likely still result in areas of the parking lot not being accessible. The exact plans and method for the repair method are being developed.

Staff is concerned with the fast approaching rainy and storm season and the summer BCC recess. Staff is seeking authorization for this work that may even be completed prior to the BCC returning from their summer break. While it is the intention to complete this work via the most economical manner possible, there still remains the chance for encountering unknown conditions.

Staff is currently evaluating these conditions to the greatest extent possible to determine an estimated cost for these repairs. We will be updating this agenda item with a budget amendment request for the repairs prior to the Board action.

All of these costs will be tracked with the intention of attempting reimbursement to the fullest extent of the law. Also, there may arise future work on the property if additional failures present themselves following this work. At this time, the focus is only on the existing two locations on the property.

County Attorney Review

Formal Written Review (Opinion memo must be attached)

Explanation of Other

Reviewing Attorney
D'Agostino

Instructions to Board Records

Email an approved copy of this agenda item to: **documents sent 06/14/2018 and 6/15/2018**

Jeff Bowman, Chief, Code Enforcement jeff.bowman@mymanatee.org

Pam D'Agostino, Assistant County Attorney pamela.dagostino@mymanatee.org

Geoffrey Nichols, Assistant County Attorney geoffrey.nichols@mymanatee.org

Cost and Funds Source Account Number and Name

Unknown until staff can thoroughly inspect the infrastructure.

Amount and Frequency of Recurring Costs

N/A

Attachment: [BOCC Attachments June 12, 2018 - Bradenton Associates.pdf](#)

Attachment: [Response Memo to CAO Matter No. 2017-0323 dtd 8.24.17.pdf](#)

Attachment: [Cortez Plaza Parcel Map.pdf](#)

MEMORANDUM



To: Ed Hunzeker, County Administrator
From: Diane Vollmer, Agenda Coordinator
Date: June 11, 2018
Subject: **Agenda Update for Meeting of June 12, 2018**

THIS MEMO AND THE CHANGES INDICATED BELOW ARE REFLECTED IN THE ELECTRONIC AGENDA (E-AGENDA)

CHANGES TO CONSENT AGENDA

NEIGHBORHOOD SERVICES

31. **Amendment #2 to the FY 17/18 Community Care for the Elderly (CCE) Grant Agreement** – Budget Resolution B-18-078 was updated and replaced to complete the Batch ID number depicted in the Resolution.

PROPERTY MANAGEMENT

45. **Lease Agreement between Manatee County and Commercial Ownership LTD for the relocation of EMS Stations 1 and 11** – The requested action was revised to read:
“Motion to authorize the County Administrator to execute and deliver the Lease Agreement substantially in the form set forth in the agenda item, with such insubstantial changes, insertions and omissions, and such exhibits thereto, as may be approved by the County Administrator and County Attorney, the execution thereof by the County Administrator on the advice of the County Attorney being conclusive evidence of such approval.”
46. **Permanent Drainage Easement Agreement between Manatee County and Home Depot U.S.A., Inc., and execute the Consent, Joinder and Subordination Agreement between Manatee County and Great Lakes Developments, Inc., and Small Pond Holdings, Inc.:**
- The Permanent Drainage Easement Agreement was updated and replaced to provide for a correction to the notary on Page 3 of the agreement.
 - The Consent, Joinder and Subordination Agreement was updated and replaced to correct a scrivener’s error on Pages 1 and 2.
 - An Incumbency/Secretarial Certificate and a Real Estate Delegation of Authority from Home Depot U.S.A., Inc., were added to the agenda item.
48. **Sale and Purchase of Surplus Property located at 3521 222nd Street East, Bradenton; PID 301100004**
49. **Sale and Purchase of Surplus Property located at No Assigned Address, Myakka City; PID 313600009**
50. **Sale and Purchase of Surplus Real Property located at No Assigned Address, Myakka City; PID 316000009:**
- Exhibit A to each of the Contracts for Sale and Purchase was updated to correct the Form of County Deed; and
 - The County Deed attached to each of these items was updated and replaced to reflect the correct signature block.

REDEVELOPMENT AND ECONOMIC OPPORTUNITY

65. **Board Approval of Proposed Funding for FY 2018-19 Action Plan Projects and Activities** –
- The CDBG Application Summary was revised to show a reduction in the award for the UCP Adult Training Center by \$20,000 and the addition of funding for a roof replacement at the Anna Gayle Center (as outlined in an email to Commissioners on June 8).
 - The Background Discussion section of this item was updated to indicate the change in the number of CDBG eligible activities proposed for funding from 10 to 11.

County Administrator’s Office
1112 Manatee Avenue West, Bradenton, FL 34205
Phone number: (941) 745-3717

CHANGES TO ADVISORY BOARD/COMMITTEE APPOINTMENTS

NEIGHBORHOOD SERVICES

72. **Healthcare Advisory Board – Membership** – Deleted from the agenda.
- The list of the Health Care Advisory Board’s (HCAB) current membership was corrected and replaced; and
 - The following documents were attached to the agenda item: (1) Letter from the HCAB Chairman; (2) Draft minutes of the HCAB meeting of June 5, 2018; and (3) Resignation letter from Ernest Marshall.

CHANGES TO REGULAR AGENDA

BUILDING AND DEVELOPMENT SERVICES

77. **Authorization for Staff to Make Repairs - Bradenton Associates, Code Enforcement Case #CE2016120294:**
- The requested action was updated to include: “Adoption of Budget Resolution B-18-086 amending the annual budget for Manatee County, Florida, for Fiscal Year 2017-2018.”
 - Budget Resolution B-18-086 was added to the electronic agenda.

PARKS AND NATURAL RESOURCES

79. **Strategic Initiatives & Policies / Draft Parks Master Plan** – A PowerPoint presentation was added to this item.

ADDITIONS TO CONSENT AGENDA

The following agenda items are to be incorporated in, and considered a part of, the Consent Agenda as previously published in the agenda for this meeting of the Board of County Commissioners of Manatee County

ADMINISTRATOR

82. **Letter of Non-opposition for Skyway Bridge 10K Charity Run** – Request to: “Authorize Chair to execute a letter of non-opposition to Florida Department of Transportation (FDOT) for a proposed 10k charity run across the Skyway Bridge March 3, 2019, and sponsored by the Armed Forces Families Foundation.”

FINANCIAL MANAGEMENT

83. **Supervisor of Elections - HAVA (Help America Vote Act) Grant Award** – Request for:
- Authorization for the Chairman to execute Certificate Regarding Matching Funds (Attachment D of MOA 2017-2018-0001, included in the required documentation package for this agenda item) obligating Manatee County to provide the required 15% local match of \$5,387 for the Help America Vote grant of \$35,915.
 - Adoption of Budget Resolution B-18-087 amending the annual budget for Manatee County, Florida, for fiscal year 2018.

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Batch ID: DM61118A

Reference: BU18000325

ADOPTED IN OPEN SESSION WITH A QUORUM PRESENT AND VOTING THIS _____ DAY OF _____, 2018.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: _____
Chairman

ATTEST: Angelina Colonnese
Clerk of Circuit Court

By: _____
Deputy Clerk

Incident/Investigation Report

Agency: MCSO

Case Number: 2017-024995

Date: 09/18/2017 10:33:25

Incident Information

Date/Time Reported 09/04/2017 12:26	Date/Time Found 09/04/2017 12:26	Date/Time Found 09/04/2017 12:26	Officer (11003314) RODRIGUEZ, JOEL
Incident Location 673 Cortez Rd W, Bradenton, FL 34207			

Zone: W20

Grid: 2011

Charges

1	Charge Type	Description INFORMATION ONLY	Statute 95001	UCR 950	<input type="checkbox"/> Att <input checked="" type="checkbox"/> Com
Alcohol, Drugs or Computers Used <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computers		Location Type PARKING LOT/GARAGE	Premises Entered	Forced Entry <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Weapons 1. 2. 3.
Entry	Exit	Criminal Activity			
Bias Motivation NONE (NO BIAS)		Bias Target	Bias Circumstances		Hate Group

Target - Discard

Incident/Investigation Report

Agency: MCSO

Case Number: 2017-024995

Date: 09/18/2017 10:33:25

Notes/Narrative

Information Report

673 Cortez Rd W @Cortez Coins
Bradenton, FL 34205

Crystal Wood lives in Heather Hills MHP which is less than a mile from the listed location. Crystal's neighborhood and surrounding neighborhoods recently suffered significant water damage to their homes from flooding from the recent storms. Construction is being done at the listed location for a sink hole in the parking lot and damage to water drainage pipes. Crystal claims the construction being done is responsible for her neighborhood drainage system not draining the water properly from the rain causing it to backup into their streets and homes. Large sand bags divert the water from entering the construction site and the drainage canal that connects the plaza and adjacent neighborhoods. Crystal claimed that this possibly caused the water blockage which flooded her neighborhood. She stated she lost two vehicles and an A/C unit totaling \$20,000 worth of damage. Crystal has video recordings and photos of the construction work and will be contacting the county to report the incident. We spoke with the construction manager, Randy, of Bella Vista Construction who was on scene. Randy stated he was hired by Franklin Street Properties to replace the damaged water drainage pipes and the sink hole. He stated the pipes were 47 years old and were partly damaged but water could still get through. Randy stated the sand bags were placed in the canal on Friday after the recent storm passed. The work is being financed by the owner of the property but supervised by the county. Manatee County inspector Matt Stull is one of the inspectors who has been working with Randy. Crystal wanted this information to be documented and will follow up to have this problem resolved.

77

IF YOU WISH TO ADDRESS THE BOARD DURING A PUBLIC HEARING ON TODAY'S AGENDA, PLEASE COMPLETE THIS FORM. THANK YOU.

Individuals wishing to speak on any Public Hearing matter must indicate so by filling out this form and returning it to the Clerk prior to the beginning of the Public Hearing.

PLEASE PRINT

Name Crystal Wood

Address 204 49th Ave W
Bradenton, FL 34207

Representing Heather Hills Mobile

Public Hearing matter on which you want to speak: PK

Cortez Plaza East

Please check one for each #:

1. Are you in favor: *
opposed:

2A. Speaking as an individual? Yes

OR

2B. If you are speaking as an official representative of a group: **

Name of Group:

**** You are required to provide the Clerk with written evidence of your authority to speak on behalf of the organization or group you represent for land use public hearings.**

3. Do you have a visual presentation or other evidence to be submitted to the Board?

Yes No

4. Do you wish to be notified of any subsequent dispute resolution proceedings?

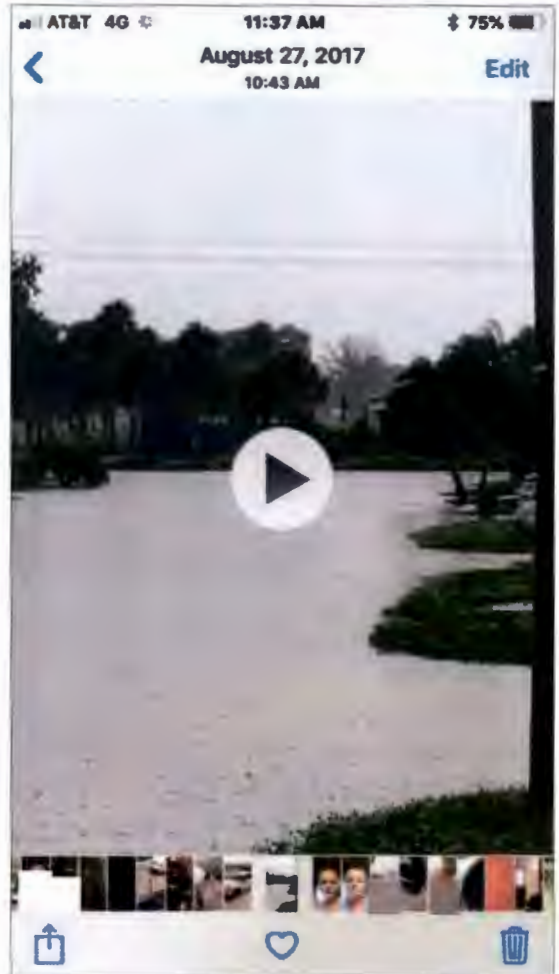
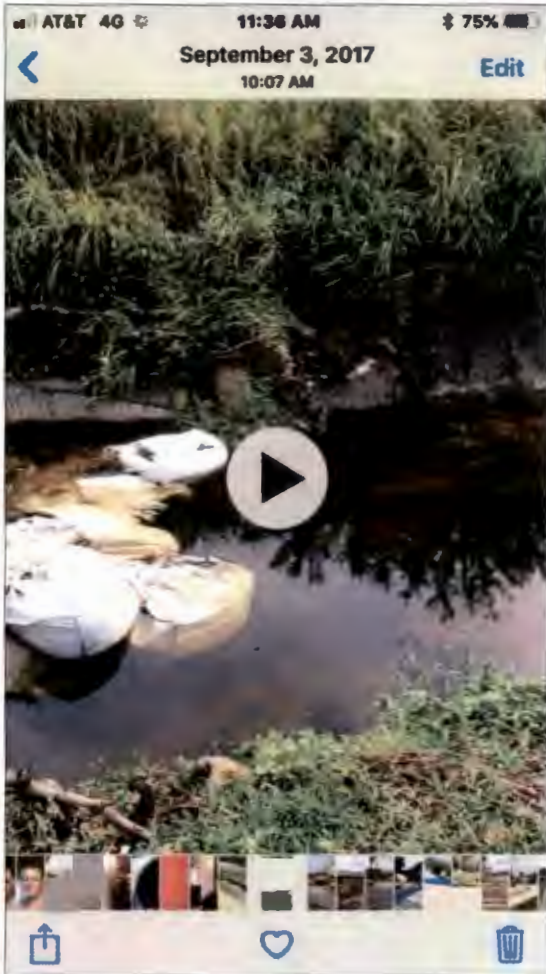
Yes No

* Designation in favor or opposed is required solely for determination of the order of appearance. The number of people for or against a matter is not considered by the Board with regard to whether to approve or deny the matter.

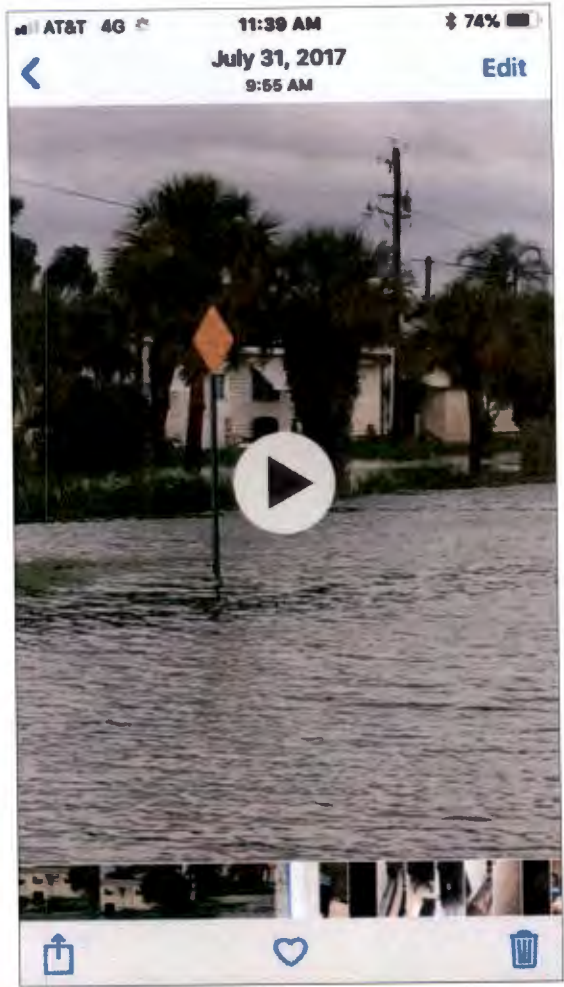
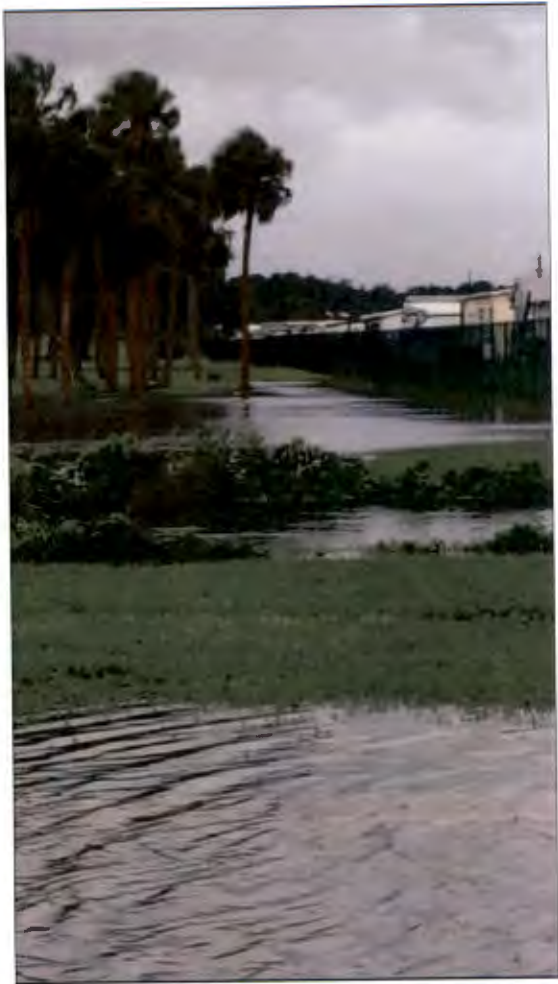








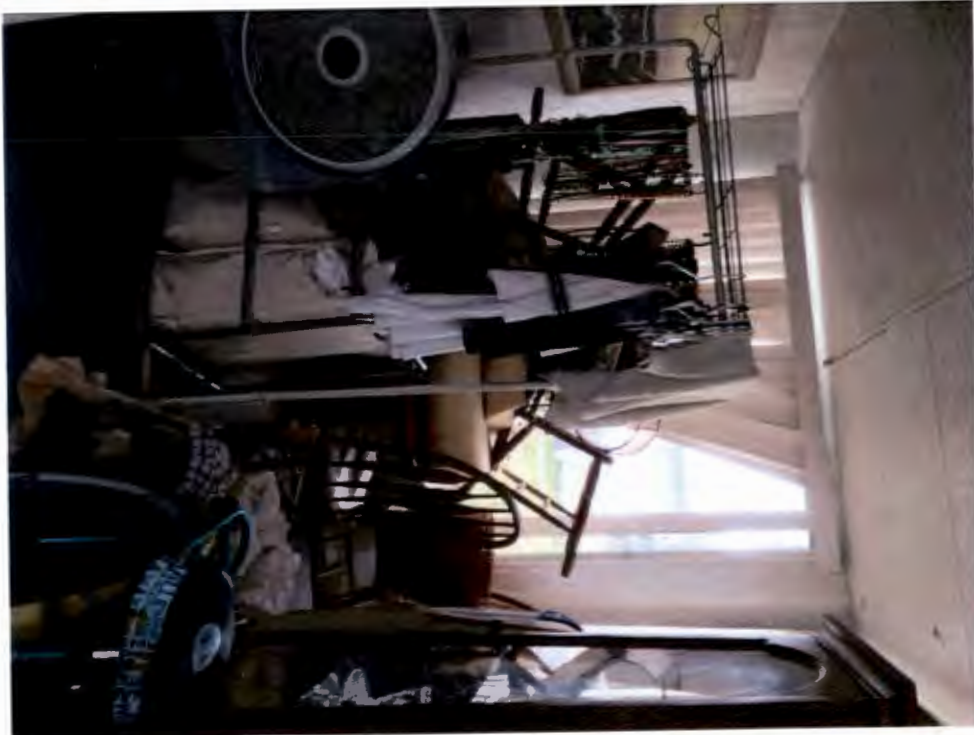






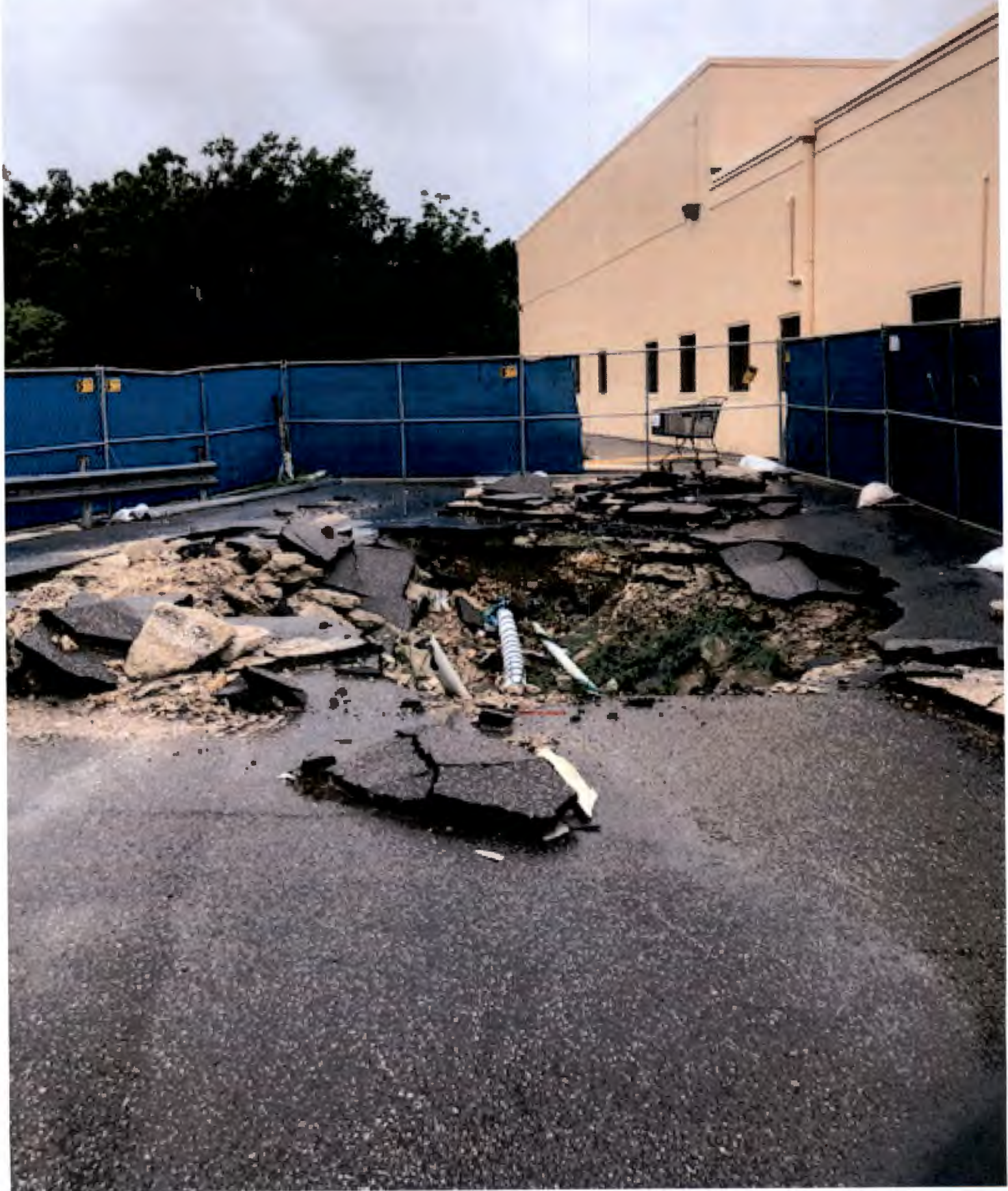










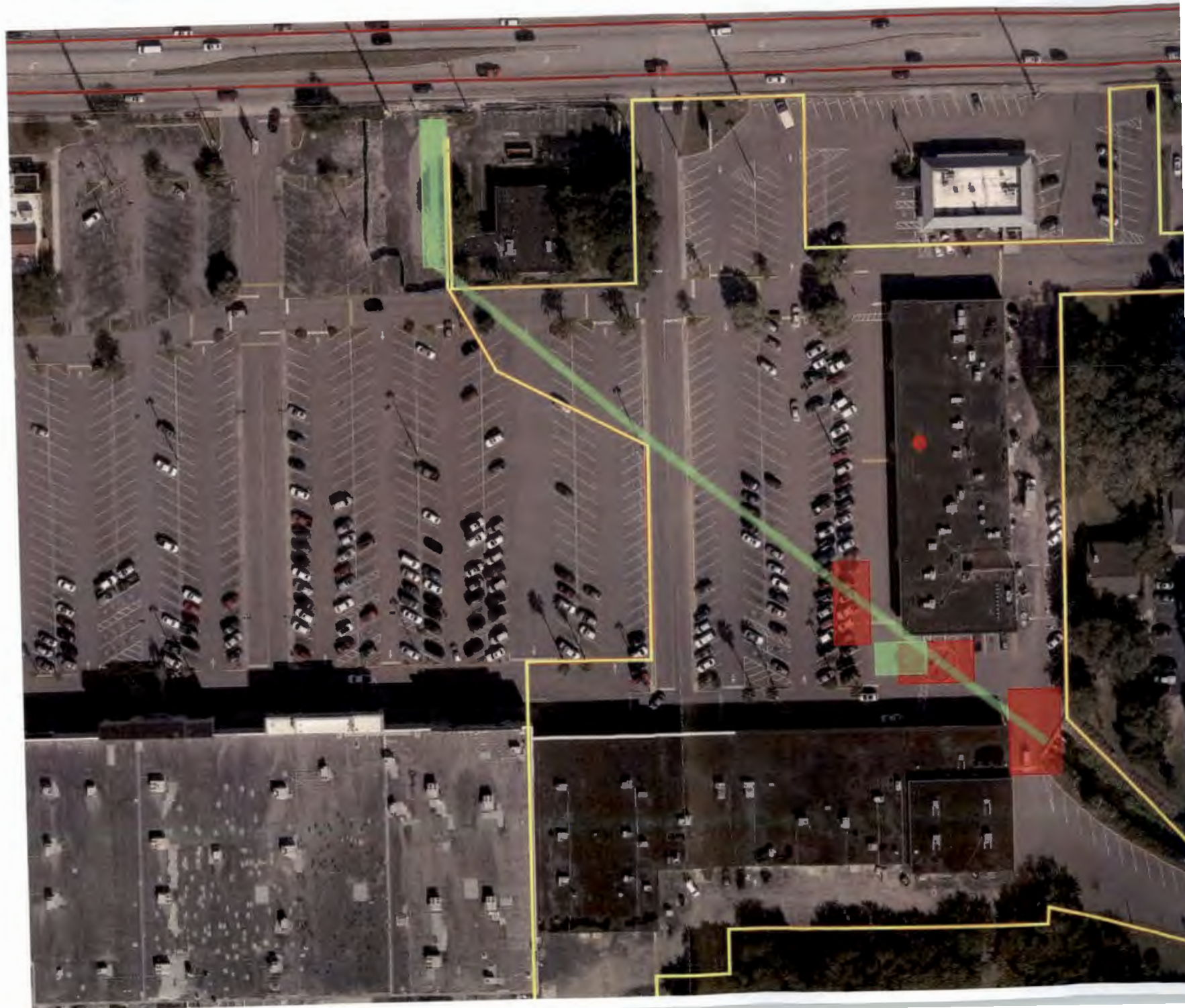




Blumberg No. 5137
BCC JB
#11 Cotez
Photos Lelais



~~0000000000~~ / Corner of Cortez Rd W & 5th St W



**CODE ENFORCEMENT SPECIAL MAGISTRATE
MANATEE COUNTY, FLORIDA**

MANATEE COUNTY, FLORIDA,
Complainant,

CASE NO. CE2016120294

vs.

Bradenton Associates Co. LLC,
Respondent

AMMENDED COMPLIANCE ORDER

THIS CAUSE came on for hearing before the Code Enforcement Special Magistrate of Manatee County, Florida, on May 23, 2018, after due notice to Respondent, and the Special Magistrate having heard testimony under oath, received evidence and heard argument, thereupon issues this Compliance Order as follows:

FINDINGS OF FACT

1. Respondent(s), Bradenton Associates Co. LLC, whose mailing address is 600 N Westshore Blvd., Ste 600 Tampa, FL 33609, is/are the owner(s) or person(s) in charge of the property located at 705 Cortez Rd., Bradenton, FL, and identified in the Manatee County Property Appraiser's records as PIN 5342710059.
2. Respondent(s) was/were properly served with a Notice of Violation in accordance with Section 162.12, Florida Statutes, and Section 2-2-25 of the Manatee County Code. Respondent(s)
 was/were was/were not present at the hearing.
3. The violation: there is an unmaintained parking lot with large pot holes causing life safety issues.
4. The Notice of Violation states that the violation must be corrected on or before January 26, 2017.
5. As of May 23, 2018, the condition described in paragraph 3 herein remained uncorrected.

CONCLUSIONS OF LAW

1. Respondent by reason of the foregoing, is in violation of Section 2-9-105 of the Manatee County Code of Ordinances, in that Respondent has an unmaintained parking lot with large pot holes causing life safety issues and has failed to remedy the aforesaid violation.
2. Respondent is subject to the provisions of Chapter 162, Part 1, Florida Statutes, and Chapter 2-9 of the Manatee County Code of Ordinances.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted in Chapter 162 and the Manatee County Code of Ordinances, it is hereby ORDERED:

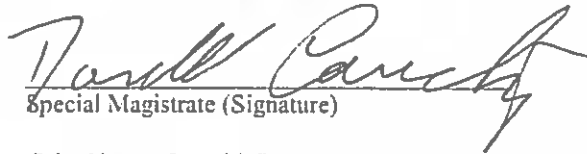
1. THAT respondent correct the aforesaid violation by repairing the storm water drains and the parking lot to a safe and functional condition.
2. THAT in the event that the aforesaid violation is not corrected on or before 3/1/2018, a fine of 75 per day shall be imposed against the Respondent for each day the violation has continued past the compliance date ordered. This fine shall continue to accrue until Respondent comes into compliance with this Order. If the violation is not corrected on 3/1/2018 and because the violation presents a serious threat to public safety, the County is authorized, pursuant to Florida Statutes 162.09(1), to make all reasonable repairs which are required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed.

CE2016120294

3. If the required corrective action is not taken as ordered on or before 3/1/2018, a certified copy of this Order shall be recorded in the public records of Manatee County, Florida, and shall thereafter constitute a lien against the above-described property and upon any other real or personal property owned by Respondent pursuant to Section 162.09, Florida Statutes, and Section 2-9-8 of the Manatee County Code of Ordinances.
4. That this Order is self-executing upon an Affidavit of Non-compliance being filed with the Clerk of the Circuit Court of Manatee County.

DONE AND ORDERED this 23rd day of May, 2018.

Manatee County Code Enforcement Special Magistrate


Special Magistrate (Signature)

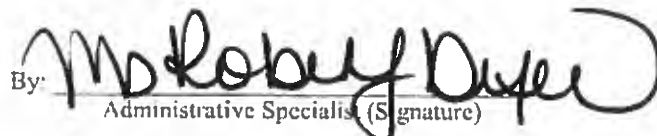
Print Name Donald Courtney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Compliance Order has been filed for the record on May 23, 2018 and has been furnished to the Respondent (s),

- Personally, on this 23rd day of May, 2018
- By US Mail on this 23rd day of May, 2018.

Robin Dyer, Code Enforcement Administrative Specialist
Manatee County

By: 
Administrative Specialist (Signature)

Print Name: Ms. Robin J Dyer

Code Enforcement Division
1112 Manatee Ave West
Bradenton, FL. 34205

Attention: It is your responsibility to notify Code Enforcement at 941-748-2071 to verify that the violation has been brought into compliance and that any fines/liens have been satisfied.



05/29/2018 12:54



05/29/2018 12:54



COINS

LAUNDRY

05/29/2018 12:54

LAUNDRY

COINS



05/29/2018 12:55



05/29/2018 12:55



05/29/2018 12:57



05/29/2018 12:57



**smith
fence**
Pinellas (727) 573-5440
Hillsborough (813) 223-9267
Toll Free (800) 229-3362

05/29/2018 13:01

Smith
ence

05/29/2018 13:01



OFFICE OF THE COUNTY ATTORNEY

MITCHELL O. PALMER, COUNTY ATTORNEY*
William E. Clague, Assistant County Attorney
Sarah A. Schenk, Assistant County Attorney**
Christopher M. De Carlo, Assistant County Attorney
Geoffrey K. Nichols, Assistant County Attorney
Pamela J. D'Agostino, Assistant County Attorney
Anne M. Morris, Assistant County Attorney
Katharine M. Zamboni, Assistant County Attorney
Alexandria C. Nicodemi, Assistant County Attorney

MEMORANDUM

DATE: August 24, 2017

TO: Chad Butzow, P.E., Deputy Director – Field Operations Services,
Public Works Department
Sia Mollanazar, P.E., County Engineer, Public Works Department

THROUGH: Mitchell O. Palmer, County Attorney *MOP 8-25-17*

FROM: Pamela J. D'Agostino, Assistant County Attorney *PJD 8-24-2017*

RE: **Cortez Plaza Storm Water Culverts; CAO Matter No. 2017-0323**

Issues Presented:

In this Request for Legal Services (RLS), you have asked the County Attorney's Office (CAO) to provide answers to the following restated questions:

1. Can Manatee County (County) force a property owner to repair or properly maintain a privately owned storm water conveyance system to prevent and alleviate upstream flooding of other private property?
2. What can the County do to protect the general public from an unsafe parking lot on private property?
3. What can the County do to protect the general public and the County's drainage infrastructure when a private property owner fails to properly maintain private drainage facilities and infrastructure?
4. Does the County bear any responsibility for an unsafe parking lot on private property?

* Board Certified in Construction Law

** Board Certified in City, County, & Local Government Law

5. Is the County able or required to order that a parking lot, or portions thereof, which has collapsed as a result of failed underground drainage pipes and infrastructure be vacated until repaired and made safe?
6. Can the County issue citations when a private owner's parking lot has collapsed? If so, which department is authorized to do so?
7. Can the County impose penalties upon a property owner who fails to make the necessary repairs to a parking lot on private property? If so, what penalties are available?
8. Would the County be liable for any flooding upstream that occurs as a result of a private property owner's failure to properly maintain drainage on his property?
9. Can the County make the necessary repairs to the parking lot and the drainage infrastructure, both of which are on private property, and then recover the costs of those repairs from the property owner? If so, how?
10. What applicability, if any, does Policy 9.4.5.3 of the County's Comprehensive Plan have to a private property owner whose parking lot is collapsing due to failed underground drainage infrastructure?

Brief Answers:

1. No.
2. The County can initiate proceedings to cause the abatement of the unsafe conditions by repair, vacation or demolition or a combination thereof pursuant to the County's Unsafe Structures Ordinance.
3. Similarly, the County can initiate proceedings to cause the abatement of the unsafe conditions by repair, vacation or demolition or a combination thereof pursuant to the County's Unsafe Structures Ordinance.
4. No.
5. Yes, in accordance with the County's Unsafe Structures Ordinance.
6. Yes, the building official in the Building and Development Services Department is authorized to administer and enforce the County's Unsafe Structures Ordinance.
7. Possibly, depending on the facts and circumstances and provided that the County abides by the procedures outlined in the County's Unsafe Structures Ordinance.
8. No.
9. Possibly, depending on the facts and circumstances and provided that the County abides by the procedures outlined in the County's Unsafe Structures Ordinance.
10. Limited.

Recommendation:

Staff should review the following ordinances, code provisions and statutes: (1) Manatee County's Unsafe Structures Ordinance, (2) Article VI of Chapter 2-9 of the Manatee County Code of Ordinances (Code), (3) Section 2-10-75 of the Code, (4) Section 108 of the Manatee County Land Development Code (LDC), and (5) Sections 60.05, 162.30 and 823.05, Florida Statutes. This RLS raises a myriad of operational and business issues which are not legal questions for the County Attorney's Office and instead should be considered by staff under the guidance of the County Administrator, subject to the final decision-making authority of the Board of County Commissioners.

Discussion:

On the south side of 44th Avenue West (Cortez Road), east of 9th Street West and west of 5th Street West is a shopping center complex (Cortez Plaza) which currently contains numerous business including the following: Party City, Ross, Michael's and Bed Bath and Beyond. In 2010, the County inspected the stormwater culverts at Cortez Plaza. At that time, staff identified some structural concerns which needed to be addressed and concluded that the end of the useful life expectancy of the culverts was near. Staff was also aware that during extreme rain storm events, homes upstream of these culverts (which is southeast of the Cortez Plaza parking lot) would flood. A title search was performed by staff and no drainage easements or right-of-way to the County were found within the area of the drainage pipes at Cortez Plaza. Staff also searched Board records back to October 1947 and found no records concerning the installation or coverage of the drain in the Cortez Plaza area. Staff found no records to support the County's ownership of the drain through Cortez Plaza. Staff sought guidance from the CAO relative to the respective roles and responsibilities of both the County and the property owner.

Then-Deputy County Attorney, Rodney C. Wade, answered the questions posed by staff by advising as follows:

1. Unless evidence reveals that the County has an ownership interest in the affected area or infrastructure, the County had no direct responsibility to correct the problem.
2. The property owner has sole responsibility for ensuring the structural integrity of the parking lot and underground drainage system beneath it. If either of those structures fail, the landowner would be responsible for any damage or personal injury which results as well as for any upstream flooding.
3. Staff should contact the property owner and begin a dialogue with the property owner to ensure the repairs or replacement of the culverts as appropriate. If the landowner refuses to meet or take the action staff deems warranted, the County

should consider bringing a code enforcement or other legal proceeding against the landowner to ensure the health and safety of the public.

Since that original RLS, large holes have developed in the parking lot at various locations where the underground pipes have collapsed. Each time, repairs were made with apparently little involvement from the County. In August of 2016, around the time when Tropical Storm Hermine came through Manatee County, two (2) separate collapses occurred in the parking lot. One (1) is directly west of a former bank building located in the northern half of the parking lot. The other is located on the southeast corner of the parking lot. Since November of 2016, Public Works Department staff has been in contact with the property management company for Cortez Plaza regarding these issues and has notified that company of its concerns regarding the proposed repairs.

In April of 2017, the County received correspondence from counsel for the Burgundy Unit One Condominium Association, Inc., (Association) which is located upstream of these culverts (which is also southeast of the Cortez Plaza parking lot). That letter implored the County to force the owner to make the necessary repairs to the pipes under the parking lot. In July of 2017, the landowner attempted to repair the collapsed area to the north near the former bank building. The landowner has made no effort to repair the collapsed area in the southeast corner.

In August of 2017, after heavy rains, either the July repairs made by the landowner near the former bank building failed to some degree or a new collapse occurred in close proximity or both. In addition, a third collapse in the parking lot occurred which is just northwest of the one in the southwest corner.

When attempting to identify the various legal remedies available to the County, staff should first look to any relevant provisions of the Code. Article II of Chapter 2-6 of the Code is the County's Unsafe Structures Ordinance (Ordinance). That Ordinance mandates that all structures be maintained in a safe condition by the owner. The Ordinance defines "structure" to mean "that which is built or constructed." An "unsafe structure" includes any structure that has any of the following conditions, such that the life, health, property or safety of the general public is endangered:

1. It has been damaged by flood or other cause to the extent that its structural integrity is less than it was prior to the damage and is less than the minimum requirement established by the Florida Building Code for new structures or the applicable building code in effect at the time of construction for existing structures;
2. It is manifestly unsafe for the purpose which it is being occupied;
3. It, as a result of decay, deterioration or dilapidation, is likely to fully or partially collapse;
4. It is in such a condition as to constitute a public nuisance, or

5. It is unsafe or is otherwise dangerous to human life or constitutes a hazard to safety or health by reason of inadequate maintenance or dilapidation.

Section 2-6-19(a) of the Code. If the building official were to inspect Cortez Plaza and determine that any structure or portion thereof is unsafe, pursuant to the Ordinance, proceedings to abate the unsafe conditions by repair, vacation, demolition or a combination thereof should be initiated.

This RLS specifically inquired as to the applicability of Policy 9.4.5.3 of Manatee County's Comprehensive Plan (Plan). Generally, one of the principal purposes of a comprehensive plan is to provide "principles, guidelines, standards, and strategies for the orderly and balanced *future* economic, social, physical, environmental, and fiscal development" of a community. See Section 163.3177(1), Florida Statutes (emphasis added). The Plan is intended to guide *future* development. The Plan does not grant the County the authority to repair poorly maintained or poorly functioning private stormwater management systems nor recover the costs of these improvements through a special assessment. The applicability of Policy 9.4.5.3 is limited to staff's review of any permit applications submitted. It is unknown what, if any, permit applications have been submitted relative to Cortez Plaza.

There are a number of provisions of the Code and the LDC which may be relevant to staff's analysis with respect to Cortez Plaza, including, but not limited to, Article VI of Chapter 2-9 of the Code, Section 2-10-75 of the Code and Section 108 of the LDC. There are also a number of statutory provisions which are relevant to the subject matter of this RLS. Section 60.05, Florida Statutes, provides for the abatement of nuisances. It authorizes the county attorney to sue in the name of the state on his or her relation to enjoin a nuisance, as defined in Section 823.05, Florida Statutes, the person or persons maintaining said nuisance and the owner or agent of the building or ground on which said nuisance exists. Although Section 823.05, Florida Statutes, does not specifically define a nuisance, close review reveals that whoever erects, establishes, continues, maintains, owns or leases any building or place *which tends to annoy the community or injure the health of the community* shall be deemed guilty of maintaining a nuisance. The statute also mandates that the building or place where such a nuisance is maintained shall likewise be declared a nuisance. Additionally, the statute directs that abatement and enjoinder of such people and places shall be in accordance with Sections 60.05 and 60.06, Florida Statutes. Finally, Section 162.30, Florida Statutes, authorizes counties to enforce violations of county codes or ordinances through the filing of a civil action in either county or circuit court, depending on the relief sought.

Conclusion:

The property owner—not Manatee County—has the sole responsibility to ensure the structural integrity of the parking lot and the piping system under the parking lot. Accordingly, the property owner—not Manatee County—is responsible for any damage or personal injury

Chad Butzow, Deputy Director – Field Operations Services, Public Works Department
Sia Mollanazar, P.E., County Engineer, Public Works Department
August 24, 2017
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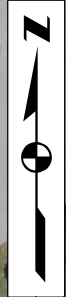
resulting. Furthermore, the property owner—not Manatee County—is responsible for upstream flooding as a result of these failures. However, the County has the authority to bring a code enforcement action or other legal proceeding against the landowner to ensure the health and safety of the public. Staff from the Public Works Department and the Building and Development Services Department should work together to determine the best way to address all concerns relative to Cortez Plaza.

This completes my response to your Request for Legal Services. Please contact me if you have any questions or if I can be of further assistance.

Copies to:

Ed Hunzeker, County Administrator
Dan Schlandt, Deputy County Administrator
Cheri Coryea, Acting Deputy County Administrator
John Osborne, Acting Deputy County Administrator
Ron Schulhofer, Director, Public Works Department
John Barnott, Director, Building and Development Services Department
Jeffrey Bowman, Code Enforcement Chief, Building and Development Services
Department
Katharine M. Zamboni, Assistant County Attorney, County Attorney's Office

**Cortez Plaza
Bradenton Associates
CFSMC-Bradenton LLC**



CORTEZ RD W
CORTEZ RD W

US 41

MAIN ST

9TH ST W

MINEOLA ST

SEMINOLE ST

GROVELAND ST

9TH ST W

9TH ST W

ORLANDO AVE

Legend

1 inch = 200 feet

This map was developed by Manatee County Government. It is provided for general reference and is not warranted in any way. Errors from non-coincidence of features from different sources may exist. The Manatee County BOCC shall be held harmless for inappropriate or unintended uses of the information.